

REMARKS

Reconsideration and allowance in view of the foregoing amendments and the following remarks are respectfully requested.

Upon entry of this Amendment, claims 1, 3-11, and 13-26 will be pending in the present application. Claims 2 and 12 have been cancelled. Claims 15-26 have been withdrawn from consideration.

I. Rejection of the Claims Under 35 U.S.C. § 102

Claims 1-2, 6, 8, and 11-12 stand rejected under 35 U.S.C. § 102 as being anticipated by U.S. Patent No. 5,551,424 to Morrison et al. ("the '424 patent"). Applicant respectfully traverses this rejection for the reasons presented below.

Independent claim 1 has been amended to clarify that the physiological condition measuring device comprises a sensor that includes a first light source that transmits light along a first optical measurement path, a second light source that provides light along a second optical measurement path, a first light detector adapted to detect light along the first optical measurement path, and a second light detector adapted to detect light along the second optical measurement path. A processing system receives the output of the light detectors and produces a measurement indicative of a physiological condition of the patient based thereon. The measurement comprises (1) a first measurement common to the first and the second optical measurement paths but distributed independently in the first and the second optical measurement paths, and (2) a second measurement associated with the first optical measurement path and the second optical measurement path.

Applicant respectfully submits that the '424 patent does not teach or suggest a device having these features. For example, the '424 patent uses only a single light detector and does not perform the first or second measurements as defined in claim 1. The other cited references also fail to teach or suggest these features of amended independent claim 1. Thus, claim 1 is believed to be patentably distinguishable over the cited references.

Independent claim 11 is similar to claim 1 in that it recites a step of measuring light received by obtaining a measurement common to both optical measurement paths but distributed independently in each optical measurement path, and (2) obtaining a different measurement associated with each optical measurement path. These measurements corresponds to the first and second measurements recited in claim 1, which are not taught or suggested by the cited references. Thus, claim 11 is believed to be patentably distinguishable over the cited references for the reasons discussed above with respect to claim 1.

For the reasons presented above, applicant respectfully submits that independent claims 1 and 11 are not anticipated or rendered obvious by the cited references. In addition, claims 6 and 8 are also not anticipated or rendered obvious due to their dependency from independent claims 1 or 11. Claims 2 and 12 have been cancelled. Accordingly, applicant respectfully requests that the above rejection of claims 1-2, 6, 8, and 11-12 be withdrawn.

II. Rejection of the Claims Under 35 U.S.C. § 103

Claims 1-6 and 9-14 stand rejected under 35 U.S.C. § 103 as being unpatentable over U.S. Patent No. 5,529,064 to Rall et al. ("the '064 patent") in view of U.S. Patent No. 5,782,756 to Mannheimer ("the '756 patent"). Applicant respectfully traverses this rejection for the reasons presented below.

Independent claims 1 and 11 are not rendered obvious for the reasons presented above. The additional citations to the '064 patent and the '756 patent fail to teach or suggest the first and second measurements taken along different optical paths recited in these claims.

Independent claims 9 and 14 define an apparatus and method, respectively, in which at least three wavelengths of light are generated in order to produce at least two sets of wavelengths of light, each set containing at least two wavelengths of light. These claims further recite producing a measurement that corresponds to a weighted combination of the wavelengths. Applicant submits that the cited references do not teach or suggest a device or method that provides three wavelengths of light to produce a measurement of a physiological condition.

Applicant notes that the Examiner indicated in on page 4, line 8, of the September 8, 2003 Office Action that U.S. Patent No. 5,782,756 teaches using three wavelengths of light. Applicant respectfully disagrees. In making this assertion, the Examiner did not indicated where in this patent the use of three wavelengths of light is discussed. Moreover, the Examiner's statement - that this references uses three wavelengths of light - was made with respect to claim 3, which does not even recite using three wavelengths of light. Therefore, it is not clear if the Examiner is properly interpreting the teaching of the '756 patent. In addition, a review of the '756 patent finds no reference to the use of three wavelengths of light. The other cited references are also believed to be silent as to the use of three wavelengths. Thus, claims 9 and 11 are believed to be patentably distinguishable over the cited references.

For the reasons presented above, applicant respectfully submits that independent claims 1, 9, 11, and 14 are not rendered obvious by the cited references. In addition, claims 3-6, 10, and 13 are also not rendered obvious due to their dependency from independent claims 1, 9, or 11. Claims 2 and 12 have been cancelled. Accordingly, applicant respectfully requests that the above rejection of claims 1-6 and 9-14 be withdrawn.

Claims 1 and 7 stand rejected under 35 U.S.C. § 103 as being unpatentable over U.S. Patent No. 6,298,253 to Buschmann ("the '253 patent") in view of the '756 patent. Independent claim 1 is not anticipated or rendered obvious for the reasons presented above. The additional citation to the '253 patent fails to teach or suggest the first and second measurements taken along different optical paths recited in these claims. Claim 7 is not rendered obvious due its dependency from independent claim 1. Accordingly, applicant respectfully requests that the above rejection of claims 1 and 7 be withdrawn.

IYER et al. -- Appln. No.: 09/581,122

All objections and rejections have been addressed. It is respectfully submitted that the present application is in condition for allowance and a Notice to the effect is earnestly solicited.

Respectfully submitted,

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